



Agenda Date: 9/18/23
Agenda Item: IIIB

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OFFICE OF CABLE TELEVISION
AND TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF COMCAST)
OF NEW JERSEY, LLC, FOR A RENEWAL)
CERTIFICATE OF APPROVAL TO CONTINUE TO)
CONSTRUCT, OPERATE AND MAINTAIN A CABLE)
TELEVISION SYSTEM IN AND FOR THE)
BOROUGH OF OCEAN GATE, COUNTY OF)
OCEAN, STATE OF NEW JERSEY) DOCKET NO. CE22020108

Parties of Record:

Stan Barrett, Esq., Scarinci Hollenbeck, LLC, on behalf of Comcast of New Jersey, LLC
Ileana Vazquez-Gallipoli, Clerk, Borough of Ocean Gate, New Jersey

BY THE BOARD:

On August 29, 1974, the New Jersey Board of Public Utilities (“Board”) granted Clear Television Cable Corporation a Certificate of Approval (“Certificate”) in Docket No. 7312C-5067 for the construction, operation and maintenance of a cable television system in the Borough of Ocean Gate (“Borough”). Due to a series of Board approved transfers, the Certificate was held by Clear Cablevision Inc. d/b/a Adelphia Cable and on June 18, 1991, the Board issued a Renewal Certificate of Approval (“Renewal Certificate”) in Docket No. CE90070648. Through a series of subsequent transfers, with the required Board approvals, the current holder of the Certificate is Comcast of New Jersey, LLC (“Petitioner”). On September 14, 2005, the Board issued a Renewal Certificate to the Petitioner for the Borough in Docket No. CE05060518. Although by its terms, the Petitioner’s above referenced Certificate expired on August 29, 2019, the Petitioner is authorized to continue to provide cable television service to the Borough, pursuant to N.J.S.A. 48:5A-25, pending disposition of proceedings regarding the renewal of its Certificate.

The Petitioner filed an application for the renewal of its municipal consent with the Borough in November 2018, pursuant to N.J.S.A. 48:5A-23 and N.J.A.C. 14:18-13.1 through 9. On November 18, 2020, the Borough, after public hearing, adopted an ordinance granting renewal municipal consent to the Petitioner (“Ordinance”). The Petitioner formally accepted the terms and conditions of the Ordinance on April 6, 2021. On February 28, 2022, pursuant to N.J.S.A. 48:5A-16, the Petitioner filed with the Board for a renewal of its Certificate for the Borough.

DISCUSSION AND FINDINGS

The Board has reviewed the application for municipal consent, the ordinance, and the petition for a Renewal Certificate. Based upon this review and the recommendation of the Office of Cable Television and Telecommunications, the Board **HEREBY FINDS** the following:

1. The Petitioner possesses the requisite legal, character, financial, and technical qualifications for the awarding of a Certificate. Further, these qualifications were reviewed by the Borough in conjunction with the municipal consent process.
2. The design and technical specifications of the system shall ensure that the Petitioner provides safe, adequate, and proper service.
3. The Petitioner has represented that all previously required construction within the franchise territory is complete.
4. The franchise period as stated in the ordinance is 10 years, pursuant to N.J.S.A. 48:5A-19 and 25. The Board finds this franchise period reasonable.
5. The Borough has reserved the right to review the Petitioner's performance with regard to the ordinance. In the event that the Borough shall find that the Petitioner has not substantially complied with the material terms and conditions of the ordinance, the Borough shall have the right to petition the Board for appropriate administrative action, pursuant to N.J.S.A. 48:5A-47, provided, however, that the Borough shall first have given the Petitioner written notice of all alleged instances of non-compliance and an opportunity to cure the same within 90 days of that notification. If, after such reasonable notice and opportunity to cure, the Petitioner has not cured any such findings of non-compliance, the Borough may petition the Board for appropriate administrative action, including modification and/or termination of the Certificate.
6. The Petitioner shall proffer service to any residence along any public right-of-way in the Primary Service Area, at no cost beyond standard and non-standard installation charges as set forth in the Petitioner's application. The Petitioner shall utilize the line extension policy attached to the Certificate (Appendix 'I') for any extension outside of the Primary Service Area. The minimum homes per mile ("HPM") figure is 35.
7. The Petitioner shall maintain an informational schedule of prices, terms and conditions for unregulated service, and promptly file any revisions thereto.
8. Pursuant to statutory requirements, the ordinance specifies a complaint officer to receive and act upon complaints filed by subscribers in the Borough. In this case, it is the Office of Cable Television and Telecommunications. All complaints shall be received and processed in accordance with any applicable rules.
9. During the term of this franchise, and any renewal thereof, the Petitioner shall maintain a local business office or agent for the purpose of receiving, investigating and resolving complaints regarding the quality of service, equipment malfunctions, and similar matters. The Petitioner currently maintains a local office located at 1256 Hooper Avenue, Toms River, New Jersey.

10. The franchise fee to be paid to the Borough is specified to be 2% of the Petitioner's gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for its cable television reception service in the Borough or any additional amount required by N.J.S.A. 48:5A-30. Additional regulatory fees shall be paid to the State in an amount not to exceed 2% of Petitioner's gross operating revenues derived from intrastate operations. The Board finds these fees to be reasonable.
11. The Petitioner shall provide public, educational, and governmental access channels and facilities in accordance with its renewal application and the ordinance. Specifically, the Petitioner shall provide one (1) public access channel, and two (2) educational access channels. The Petitioner shall also continue to make available one (1) governmental access channel that is currently administered by the Borough. The Petitioner will maintain the cable, modulators, and any equipment necessary for the Borough or its designee to send a signal to the Petitioner, and to receive the return feed of the signal.
12. Within six (6) months of issuance of this Certificate, the Petitioner shall provide to the Borough a one-time educational and governmental ("E/G") Access Capital Grant of \$8,000 to meet the E/G access capital needs of the community. Upon completion, the Petitioner shall submit proof to the Office of Cable Television and Telecommunications indicating its compliance with this provision.
13. The Petitioner shall provide, free of charge, Basic Cable Service to the Borough Hall, First Aid, Fire Department, and the Ocean Gate School.

The Board notes that a provision of the Borough's ordinance could be interpreted in a manner inconsistent with the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 et seq. Specifically, Section 14(a) of the ordinance regarding the provision of free services contains language that provides, in part, "Comcast will provide Basic Cable Service to Borough Hall, First Aid, Fire Department, and the Ocean Gate School and has the right in accordance with applicable law to deduct the fair market value of those services from franchise fees."

The Board takes exception to the above provision as it appears to modify the collection of franchise fees, which is outside of the purview of the parties under existing statutory provisions. The Federal Communications Act of 1934 ("Act") requires the cable company to pay a franchise fee and allows the Petitioner to itemize and/or identify the amount on the monthly bill assessed to satisfy any requirements imposed on the Petitioner by the cable franchise to support PEG channels, or any other services required under the franchise. However, with respect to the amount of the franchise fee, the Act states at 47 U.S.C. Sec. 542 (b): "For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5% of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services." The current franchise fee required in New Jersey, pursuant to N.J.S.A. 48:5A-30, is a total of either 2% or 3.5% of the cable operator's gross revenues, which in either instance, does not reach the federal maximum of 5%. As stated above, the Petitioner is currently required to pay the Borough a franchise fee of 2%. Any amendment to franchise fees paid by the Petitioner must be brought before the Board for review, as the duly designated franchising authority responsible for the enforcement of cable television franchise agreements. While the Petitioner may reserve its pass-through rights to the full extent permitted by law on external costs, it may not make changes to the franchise fee collected which do not exceed the federal 5% cap without prior Board approval. Therefore, the Board **HEREBY CLARIFIES** that the language identified above in Section 14(a) of the ordinance, which appears

to allow a reduction in the franchise fee without prior review by the Board, is not in conformance with the New Jersey Cable Act and the Board's rules, regulations, and orders pursuant to N.J.S.A. 48:5A- 25, and is therefore not applicable to this Renewal Certificate.

Based upon these findings, the Board **HEREBY CONCLUDES**, pursuant to N.J.S.A. 48:5A-17(a) and 28(c), that the Petitioner has the municipal consent necessary to support the petition, subject to the exception noted above; that such consent and issuance thereof are in conformity with the requirements of N.J.S.A. 48:5A-1 to 64; that the Petitioner has complied or is ready, willing, and able to comply with all applicable rules and regulations imposed by or pursuant to State and federal law as preconditions for engaging in the proposed cable television operations; that the Petitioner has sufficient financial and technical capacity, and meets the legal, character and other qualifications necessary to construct, maintain, and operate the necessary installations, lines, and equipment; and that the Petitioner is capable of providing the proposed service in a safe, adequate and proper manner.

Therefore, the Petitioner is **HEREBY ISSUED** this Renewal Certificate as evidence of Petitioner's authority to construct and operate a cable television system within the entirety of the Borough.

This Renewal Certificate is subject to all applicable State and federal laws, the rules and regulations of the Office of Cable Television and Telecommunications, and any such lawful terms, conditions, and limitations as currently exist or may hereafter be attached to the exercise of the privileges granted herein. The Petitioner shall adhere to the operating standards set forth by the Federal Communications Commission's rules and regulations, 47 C.F.R. § 76.1 et seq., including, but not limited to the technical standards 47 C.F.R. § 76.601 through § 76.630. Any modifications to the provisions thereof shall be incorporated into this Certificate.

Failure to comply with all applicable laws, rules, regulations, and orders of the Board or the Office of Cable Television and Telecommunications and/or the terms, conditions, and limitations set forth herein may constitute sufficient grounds for the suspension or revocation of this Certificate.

This Renewal Certificate is issued on the representation that the statements contained in the Petitioner's applications are true, and the undertakings therein contained shall be adhered to and be enforceable unless specific waiver is granted by the Office of Cable Television and Telecommunications pursuant to the authority contained in N.J.S.A. 48:5A-1 to 64.

This Certificate shall expire on August 29, 2029.

This Order shall be effective on September 25, 2023.

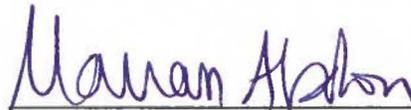
DATED: September 18, 2023

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER

ATTEST: 
SHERRIL L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

APPENDIX "I"
Office of Cable Television and Telecommunications
Line Extension Policy

Company: Comcast of New Jersey, LLC
Municipality: Borough of Ocean Gate, County of Ocean

A cable operator is required to absorb the cost of extensions to the system in the same proportion that the extension is to the remainder of the system.

Actual subscribers served by the extension are required to absorb the remainder of the cost.

If new subscribers are added to the extension, the cost is adjusted and those who previously paid receive an appropriate rebate.

1. $\frac{\text{\# of homes in extension}}{\text{mileage of extension}}$ = homes per mile ("HPM") of extension
2. $\frac{\text{HPM of extension}}{\text{Minimum HPM that company actually constructs in the system*}}$ = ratio of the density of the extension to the minimum density that the company constructs in the system ("A")
3. Total cost of building the extension times "A" = company's share of extension cost
4. Total cost of building extension less company's share of extension cost = total amount to be recovered from subscribers
5. $\frac{\text{Total amount to be recovered from subs}}{\text{Total subscribers in extension}}$ = each subscriber's share

In any case, the company shall extend its plant along public rights of way to:

1. All residences and businesses within 150 aerial feet of the operator's existing plant at no cost beyond the normal installation rate.
2. All residences and businesses within 100 underground feet of the operator's plant at no cost beyond the normal installation rate.

* The minimum HPM that the company actually constructs in the system or municipality is the minimum number of homes that the company has historically constructed at its own cost. This is a function of the operator's breakeven point and its rate of return. Unbuilt systems will use the primary service area rather than construction.

The operator's installation policies shall apply to construction beyond the public right of way.

Detailed accounting or financial information to support the minimum HPM shall be supplied to the Office for its approval in such form as required. The minimum HPM shall be updated as appropriate.

When a request for service is received, and unless good cause is shown, cable companies shall:

1. Provide a written estimate within thirty (30) days of such a request.
2. Begin construction within sixty (60) days of receipt of any deposit monies from potential subscribers.
3. Complete construction within six (6) months of receipt of any deposit monies from potential subscribers.
4. Inform each home passed along the extension of the potential costs for subscribers.

Subscribers who pay for an extension shall be entitled to rebates in the following manner:

1. If the company acquires new subscribers subsequent to the initial calculation of step 5 above, the formula will be adjusted and those who have previously paid for the extension will be entitled to an appropriate rebate. In no event shall the amount of the rebate exceed the subscriber's contribution.
2. The company shall keep accurate records of the cost of the extension, the amounts paid by subscribers, and any appropriate adjustments.
3. The company shall notify subscribers in the extension of their rights and responsibilities concerning the extension.
4. Once an individual dwelling has paid its share of the extension cost, future reconnections or installations shall be made at the company's standard rates.
5. After a period of five (5) years from the installation of the first dwelling unit in the extension, no further adjustments shall be made. Installations after five (5) years shall be at the company's standard rate.
6. Once a subscriber is installed, that person shall not normally be entitled to a refund of any monies paid for the installations, except in accordance with the rebate procedure outlined in this policy.

Definitions

Primary Service Area

The Primary Service Area (“PSA”) can be an entire municipality, but in many instances the PSA is a limited area within a community outside of which a line extension policy may apply. The PSA is depicted by a franchise map and narrative, presented and recorded during the franchise proceedings. It normally remains a fixed geographic area throughout the life of the franchise.

Line Extension Survey

Potential subscribers residing outside the PSA who request service are entitled to an estimate of their share of the cost to secure service. When conducting a survey and estimating costs, a cable company should factor in all potential subscribers who could practicably be included in the extension and give consideration to apparent residential construction in areas contiguous to the proposed extension.

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DOCKET NO. CE22020108

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